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SERVICE DATE - JANUARY 23, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34405

TRANSPORTATION AGENCY OF MONTEREY COUNTY – ACQUISITION EXEMPTION – CERTAIN ASSETS OF UNION PACIFIC RAILROAD COMPANY

Decided: January 16, 2004

On September 5, 2003, the Transportation Agency of Monterey County (TAMC), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) certain assets of a line of railroad, known as the Seaside Industrial Lead, extending from Castroville, CA (milepost 110.2), to Seaside, CA (milepost 123.3). Notice was served and published in the Federal Register on October 3, 2003 (68 FR 57511). Subsequently, on November 14, 2003, TAMC filed a motion to dismiss the notice, asserting that the transaction should not be subject to Board jurisdiction because TAMC will not become a common carrier as a result of the transaction. There is no opposition to the motion. The motion to dismiss will be granted.

BACKGROUND

TAMC is a public agency created pursuant to the State of California Government Code Section 67930 et seq. TAMC currently conducts regional transportation planning for the Monterey County area and distributes funding for transportation projects. TAMC states that it owns no rolling stock, has no rail operations staff, and provides no transit service.

According to TAMC, it plans to conduct passenger rail operations over the line. Pursuant to the purchase and sale agreement between TAMC and UP, TAMC acquired UP's right, title and interest in the subject line and certain associated improvements. TAMC states that UP retained an exclusive, perpetual easement on the line to conduct freight rail operations (freight easement), and that TAMC and UP entered into a trackage rights agreement to govern their respective rights and obligations with respect to rail operations on the line. TAMC attached copies of the trackage rights agreement and a quitclaim deed, as exhibits A and B, respectively, to its motion to dismiss. Under the terms of the freight easement, the easement shall terminate automatically upon the effective date of a decision by the Board granting UP abandonment authority and UP's satisfaction of any Board-imposed conditions. UP was granted an exemption to abandon its interest in, and obligation to provide service over, the line in Union Pacific Railroad Company – Abandonment Exemption – in Monterey County, CA, STB Docket No. AB-33 (Sub-No. 157X) (STB served and published Nov. 21, 2003) (68 FR 65760-61).

TAMC maintains that its acquisition of the line does not constitute an acquisition of a railroad line subject to the Board's jurisdiction. According to TAMC, because it does not have the right to control freight rail service and will not hold itself out as willing or able to provide freight rail service on the line, its ownership of the line does not make it a rail carrier. TAMC cites a number of cases in support of its position that this transaction is outside the Board's jurisdiction.¹

DISCUSSION AND CONCLUSIONS

The question here is whether the Board's regulatory approval is required for TAMC to acquire and operate the subject line. The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. 10901, if the acquiring entity is a noncarrier, including a state. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Board authorization is not required, however, when the common carrier rights and obligations that attach to the line will not be transferred. See State of Maine, 8 I.C.C.2d at 836-37.

The record shows that UP is not transferring common carrier rights or obligations and that TAMC will not hold itself out as a common carrier performing rail freight service. The agreements between TAMC and UP show that TAMC acquired certain real property and related improvements and not the property and contractual rights necessary to conduct or control common carrier freight operations on the line. TAMC will provide passenger, but not freight, service over the line. Therefore, TAMC will not become a rail carrier subject to the Board's jurisdiction as a result of the transaction. Under these circumstances, this transaction does not require Board action, and the Board will not exercise jurisdiction over it. Accordingly, TAMC's notice of exemption will be dismissed and this proceeding will be discontinued.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ Sacramento-Placerville Transportation Corridor Joint Powers Authority – Acquisition Exemption – Certain Assets of Southern Pacific Transportation Company, STB Finance Docket No. 33046 (STB served Oct. 28, 1996); Los Angeles County Transportation Commission – Petition for Exemption – Acquisition from Union Pacific Railroad Company, Finance Docket No. 32374, et al. (STB served July 23, 1996); Utah Transit Authority – Acquisition Exemption – Line of Union Pacific Railroad Company, Finance Docket No. 32186 (ICC served Dec. 23, 1992); and Maine, DOT – Acq. Exemption, ME Central R. Co., 8 I.C.C.2d 835 (1991) (State of Maine).

It is ordered:

1. TAMC's motion to dismiss its notice of exemption is granted.
2. The proceeding is discontinued.
3. This decision is effective on its date of service.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary